U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 07 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of of the Foreign Residence Requirement under Section 212(e) of the Immigration and Nationality Act; 8 U.S.C. § 1182(e).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native of Venezuela who is subject to the two-year foreign residence requirement under section 212(e) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(e). The applicant was admitted to the United States as a J2 spouse of a nonimmigrant exchange visitor, from April 1998 to August 2001. The applicant obtained a divorce from her first husband in March 2002. The applicant obtained an F1 student visa in January 2002, and she completed a graduate degree in Communication at California State University, Northridge in August 2003. The applicant married a U.S. citizen in December 2002, and she presently seeks a waiver of her two-year foreign residence requirement based on exceptional hardship to her spouse.

The director determined that the applicant had failed to establish her husband would suffer exceptional hardship if she fulfilled her two-year foreign residence requirement in Venezuela. The application was denied accordingly.

On appeal, counsel asserts that the applicant's husband [redacted] would face exceptional hardship if he moved with the applicant to Venezuela because he would be financially unable to visit or maintain contact with his parents and brother in the United States. Counsel asserts tha[redacted] would also lose his job and employment benefits, and that due to his limited Spanish language abilities, his specialized talent agent job skills and high unemployment in Venezuela, [redacted] would be unable to obtain a job in Venezuela. Counsel additionally asserts that due to political instability and crime in Venezuela [redacted] would face a threat to his safety in Venezuela. Counsel asserts in the alternative, tha[redacted] would suffer financial and emotional hardship if he remained in the U.S. while the applicant fulfilled her two year foreign residence requirement because it would be expensive to maintain two households and to visit and make phone calls to Venezuela.

Section 212(e) of the Act states in pertinent part that:

> (e) No person admitted under section 101(a)(15)(J) or acquiring such status after admission
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> > (i) whose participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or his last residence,
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> > (ii) who at the time of admission or acquisition of status under section 101(a)(15)(J) was a national or resident of a country which the Director of the United States Information Agency pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, or
> >
> > (iii) who came to the United States or acquired such status in order to receive graduate medical education or training, shall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under section 101(a)(15)(H) or section 101(a)(15)(L) until it is established that such person has

> resided and been physically present in the country of his nationality or his last residence for an aggregate of a least two years following departure from the United States: Provided, That upon the favorable recommendation of the Director, pursuant to the request of an interested United States Government agency (or, in the case of an alien described in clause (iii), pursuant to the request of a State Department of Public Health, or its equivalent), or of the Commissioner of Immigration and Naturalization [now, Citizenship and Immigration Services, CIS] after he has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien), or that the alien cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion, the Attorney General [now the Secretary, Homeland Security, "Secretary"] may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General [Secretary] to be in the public interest except that in the case of a waiver requested by a State Department of Public Health, or its equivalent, or in the case of a waiver requested by an interested United States government agency on behalf of an alien described in clause (iii), the waiver shall be subject to the requirements of section 214(l): And provided further, That, except in the case of an alien described in clause (iii), the Attorney General [Secretary] may, upon the favorable recommendation of the Director, waive such two-year foreign residence requirement in any case in which the foreign country of the alien's nationality or last residence has furnished the Director a statement in writing that it has no objection to such waiver in the case of such alien.

In *Matter of Mansour,* 11 I&N Dec. 306 (BIA 1965), the Board of Immigration Appeals stated that, "[t]emporary separation, even though abnormal, is a problem many families face in life and, in and of itself, does not represent exceptional hardship as contemplated by section 212(e)".

In *Keh Tong Chen v. Attorney General of the United States,* 546 F. Supp. 1060, 1064 (D.D.C. 1982), the U.S. District Court, District of Columbia stated that:

> Courts deciding [section] 212(e) cases have consistently emphasized the Congressional determination that it is detrimental to the purposes of the program and to the national interests of the countries concerned to apply a lenient policy in the adjudication of waivers including cases where marriage occurring in the United States, or the birth of a child or children, is used to support the contention that the exchange alien's departure from his country would cause personal hardship. Courts have effectuated Congressional intent by declining to find exceptional hardship unless the degree of hardship expected was greater than the anxiety, loneliness, and altered financial circumstances ordinarily anticipated from a two-year sojourn abroad." (Quotations and citations omitted).

The present record contains the following evidence to support the claim that the applicant's husband will suffer exceptional hardship if the applicant is required to fulfill her two-year foreign residence requirement:

2003 U.S. Department of State Public Announcements and Country Conditions Reports for Venezuela, discussing the security situation in Venezuela and indicating that the security and political situation in Venezuela is unstable due to an upcoming presidential recall election to be held August 15, 2004.

A statement from the applicant stating that her husband relies on her financial contributions and that a separation would jeopardize their relationship. The applicant states further that the economic situation in Venezuela would cause her husband to suffer financial hardship if he moved there, and that it would not be safe for her husband to move to Venezuela due to the volatile political situation.

A statement from [redacted] stating that he is financially reliant on his wife's being able to work once she completes her graduate studies, and that his wife's temporary return to Venezuela would make it difficult for her to find a job and would therefore increase their living expenses.

Bank account and income information for the applicant and [redacted]

Based on the evidence contained in the record, the AAO finds that the applicant has failed to establish that her husband would suffer exceptional hardship if he moved with her to Venezuela. The record contains no evidence to establish that [redacted]'s relationship with his parents and brother would suffer if he moved to Venezuela for two years, or that he would be unable to obtain employment or be supported by the applicant in Venezuela. The AAO notes further that the political and security-related instability discussed in the 2003 U.S. Department of State documents submitted by the applicant, relate predominantly to the recall election scheduled for August 15, 2004. The AAO notes that the election date has passed. Furthermore, the U.S. Department of State documents are general in nature and fail to demonstrate that [redacted] would face danger in Venezuela.

The AAO additionally notes that the evidence in the record reflects that [redacted] is the primary income earner and that his income pays for the bulk of the couple's expenses, and the applicant's Form I-20 student visa application reflects further that the applicant's parents assumed the costs for her educational expenses in the United States. The AAO therefore finds that the applicant has also failed to establish her husband would suffer emotional or financial hardship beyond the anxiety and loneliness ordinarily anticipated from a two-year separation, if he remained in the U.S. while the applicant returned temporarily to her country.

The burden of proving eligibility for a waiver under section 212(e) of the Act rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The AAO finds that in the present case, the applicant has not met her burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.